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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,371	09/30/2003	Don A. Tanaka	END5098-0515140	5198
26874 7590 12/10/2008 FROST BROWN TODD, LLC 2200 PNC CENTER 201 E. FIFTH STREET CINCINNATI, OH 45202				
EXAMINER RYCKMAN, MELISSA K				
ART UNIT 3773		PAPER NUMBER		
NOTIFICATION DATE 12/10/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@fbtlaw.com

### Office Action Summary

**Application No.**

10/674,371

**Applicant(s)**

TANAKA ET AL.

**Examiner**

MELISSA RYCKMAN

**Art Unit**

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10, 19, 23-25 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 19, 23-25 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/9/08 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10,19,23-25 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park (U.S. Pub. No. 2003/0120292) and further in view of Peterson et al. (U.S. Patent No. 6,673,084).

Park teaches an anastomotic device (Fig. 1), comprising a slidably woven tube, the woven tube woven from a continuous wire strand (20, Fig. 1), the woven tube defining a longitudinal axis (12, Fig. 1), and having each longitudinal end terminate in slidably engaging circumferential petals (20', Fig. 4F), the woven tube having an unactuated position (center, Fig. 4F) of a generally cylindrical shape and an actuated position (20', Fig. 4F) of a hollow rivet shape respectively for insertion through and for

forming an anastomotic attachment defining a hollow opening between two proximate tissue walls at an anastomotic surgical site (Fig. 4F), and as said anastomotic device moves from the unactuated to the actuated position, the direction of the flare reduces sliding friction between moving petals (Figs. 4D-4F), and when the anastomotic device is in the actuated position, the direction of the flare away from the tissue walls reduces pressure on tissue captured between the tip of each petal (Fig. 4G).

Park teaches the claimed invention but does not teach the woven tube having unattached ends. However, it is a matter of design choice to have unattached ends, as the device of Park performs equally as well as the current application (Nerwin v. Erlichman 168 USPQ 177 1969).

Park teaches the claimed invention but does not teach a loop configured to position the unattached ends away from tissue contact when the anastomotic device is in the deployed position. However, Peterson teaches a loop (85f, Fig. 20b) configured to position the unattached ends away from tissue contact when the anastomotic device is in the deployed position, the ends are flared in the same direction as the petal tips, and extend outside of the woven petals, each petal comprises a petal tip flaring directionally outward (Fig. 20b) away from the tissue walls when the anastomotic device is in the actuated position. It would have been obvious to one of ordinary skill in the art to have the loop of Peterson with the device of Park as this helps to secure the tissue without piercing the tissue

Claim 19:

Park teaches an underlying portion of each circumferential petal is shaped to diverge from an overlying portion of an adjacent petal for mitigating resistance to actuation (Fig. 3B).

Claim 23:

Park teaches the flaring of each circumferential petal tip comprises a monotonic slope toward a distal tip of the petal (Fig. 3B).

Claim 24:

Park teaches at least a portion of each petal has an uncurved section (portion is uncurved, Fig. 3B).

Claim 29:

Park teaches the claimed invention but does not teach an anastomotic device applier, however Peterson teaches an anastomotic device applier and the unattached ends are configured to avoid interference with the applier when moving the anastomotic device from the unactuated to the actuated position (Fig. 10, element 64). It would have been obvious to one of ordinary skill in the art to use the anastomotic device of Peterson with the device of Park as the device applier is commonly used in the art and proven successful in the art.

Claim 30:

Park teaches the wire has shape memory effect properties (para. 8).

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA RYCKMAN whose telephone number is (571)272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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MKR  
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Examiner, Art Unit 3773

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773